

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LASHUNDRA JACKSON	§	
	§	
Plaintiff,	§	
	§	CASE NO.: 2:07-CV-645-MEF
	§	
STATE OF ALABAMA DEPARTMENT OF	§	
TRANSPORTATION, JOE MCINNES, IN HIS	§	
OFFICIAL CAPACITY AS DIRECTOR OF THE	§	
STATE OF ALABAMA DEPARTMENT OF	§	
TRANSPORTATION	§	
	§	
Defendants.	§	

PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE

On July 14, 2008, this Court issued an order for Plaintiff's counsel to show cause as to why he had not filed the "Notice Concerning Settlement Conference and Mediation" that was due to be filed in this Court by June 27, 2008. In response to this Order, Plaintiff's counsel states as follows:

1. This Court entered its Uniform Scheduling Order on September 21, 2007. Doc. no. 13.

On September 29, 2007, Plaintiff's counsel entered the deadlines from the Scheduling Order onto his calendar, which is maintained in a software package called Amicus. Exhibit 1 (screen shot of Amicus calendar page). One of the deadlines Plaintiff's counsel calendared on that date was the deadline for the submission of the Notice of Settlement Conference. *Id.* The calendar entry for the deadline reflects that it was "last modified on Sat Sep 29, 2007 9:47 AM by Kell Simon." *Id.*

2. Pursuant to the Court's Order, the parties conducted their face to face settlement conference on June 20, 2008. This was the third day of the depositions of defendant's witnesses, and the

parties met in person to discuss settlement. During that settlement conference, counsel for Defendants agreed to draft the Notice of Settlement Conference.

3. On the morning of June 27, 2008, the undersigned counsel sent an e-mail to counsel for Defendants, asking him if he had prepared the notice of settlement conference, and reminding him that it was due that day. Exhibit 2 (e-mail from Kell Simon to Andy Redd).

4. Counsel for Defendants then e-mailed a draft of the Notice to Plaintiff's counsel. Exh. 3 (e-mail from Andy Redd to Kell Simon). In the e-mail, counsel for Defendants stated: "This notice to court should be sufficient. If you wish to change or add anything, let me know. We will file it today." *Id.* Plaintiff then sent an e-mail approving the draft and stating "please file." Exh. 4 (e-mail from Kell Simon to Andy Redd).

5. Counsel for Defendant acknowledges in his Response to Court's Order (doc. no. 34) that he had agreed to file the Notice. As reflected in Defendants' Response to Court's Order, Defendants' failure to file the Notice was an oversight on their part.

6. The undersigned counsel acknowledges that the Uniform Scheduling Order required him to file the Notice by June 27, 2008. The undersigned further acknowledges that after Defendant's counsel stated he would file the Notice, the undersigned counsel removed that item from his list of pending matters, and did not check to make sure that Defendant had filed the Notice. The undersigned counsel's failure to check to make sure the Notice had been filed was an oversight, and was not wilful.

7. Given the foregoing, the undersigned counsel requests that this Court not sanction him for failing to file the Notice. The undersigned counsel was aware of the deadline to file the Notice, and calendared that deadline when the Uniform Scheduling Order was initially entered. Counsel had their

settlement conference by the deadline, and, after Defendant's counsel agreed to draft the Notice, the undersigned counsel reminded him of the need to file it on the day it was due. The undersigned counsel then relied on Defendant's counsel's representation that he would file the Notice. Both the undersigned counsel and counsel for Defendant have acknowledged that the late filing of the Notice was the result of inadvertence on both of their parts.

WHEREFORE, premises considered, the undersigned counsel for Plaintiff requests that this Court not sanction him for the late filing of the Notice Concerning Settlement Conference and Mediation.

Respectfully submitted
ROSS LAW, P.C.
1104 San Antonio Street
Austin, Texas 78701
Telephone: 512/474-7677
Facsimile: 512/474-5306

s/ Kell A. Simon
Kell Simon
Alabama State Bar No.: ASB-0214-077K

CERTIFICATE OF SERVICE

I hereby certify that on this the 18th day of July, 2008, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which will send notification to the following:

Jim R. Ippolito, Jr.
Andrew W. Redd
Jason A. Trippe
State of Alabama Department of Transportation
1409 Coliseum Boulevard
Montgomery, Alabama 36110

s/ Kell A. Simon
Of counsel

Plaintiff's Exhibit 1

Event Details

Title: Simon - Report of Settlement Conference Due Critical Appointment

Date: Fri Jun 27, 2008 Time: 07:00 AM to 07:30 AM

File: Jackson, LaShundia Remind me: 10 minutes before

Contact: Category: Client work - general

Assigned: Paige Densman, Kell Simon

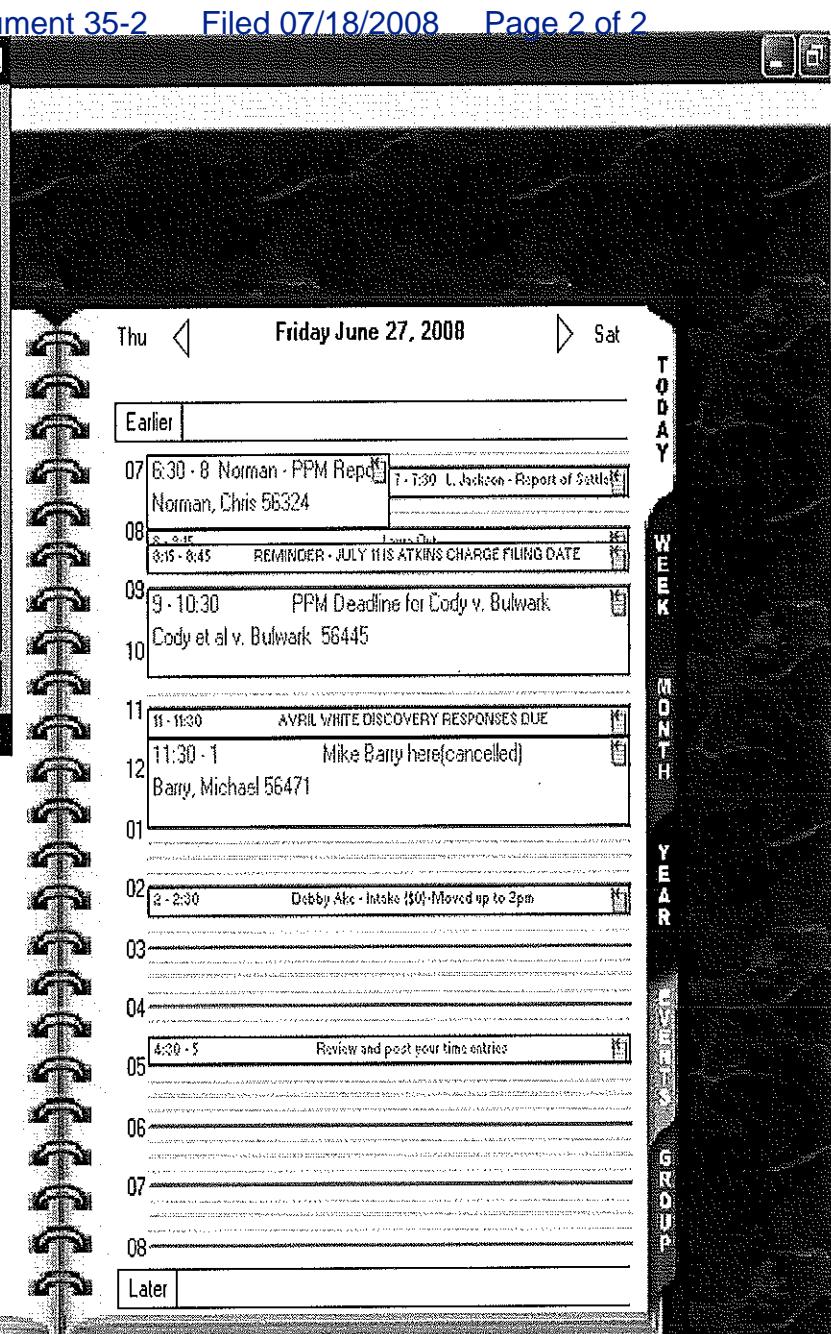
Repeat: No repeat Link: Not Linked

Assist: Assistance Setup...

Notes:

OK Cancel

Last modified on Sat, Sep 29, 2007 9:47 AM by Kell Simon



Plaintiff's Exhibit 2

Kell Simon

From: Kell Simon
Sent: Friday, June 27, 2008 7:39 AM
To: 'Redd, Andrew W.'
Subject: RE: LaShunda Jackson case

Andy -
Have you prepared the ADR report for Jackson?
It's due today.
Kell

Kell Simon
Ross|Melton P.C.
1104 San Antonio St.
Austin, Texas 78701
phone 512-474-7677 fax 512-474-5306
ksimon@rosslawpc.com

If you have a matter that has a deadline and requires an urgent response please call us immediately at 1-800-634-8042 or 512-474-7677. Please be aware that sending an instant message or e-mail and/or receipt of a response does not create an Attorney-Client relationship or constitute the formation of a contract. No obligation is created on the part of the sender or the recipient. A contract of representation can only be created by signature of an Attorney-Client Agreement.

This message is intended only for the person(s) to whom it is addressed and may contain privileged, confidential, and/or insider information. If you have received this communication in error, please notify us immediately by replying to the message and deleting it from your computer. Any disclosure, copying, distribution, or taking of any action concerning the contents of this message and any attachment(s) by anyone other than the named recipient(s) is strictly prohibited.

REQUIRED NOTICE PURSUANT TO IRS CIRCULAR 230: Any U.S. Federal tax advice included in this communication, including any attachments, is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code, or (ii) promoting, marketing, or recommending any tax-related matters addressed herein to another party.

Plaintiff's Exhibit 3

Kell Simon

From: Redd, Andrew W. [redda@dot.state.al.us]
Sent: Friday, June 27, 2008 8:02 AM
To: Kell Simon
Subject: Please review '94982'
Follow Up Flag: Review
Flag Status: Flagged

Kell:

This notice to court should be sufficient. If you wish to change or add anything, let me know. We will file it today.

We are checking with Morris and Dietz on deposition dates. Based on your e-mail, the weeks of August 4 and 11 are the available times for you so we will check on some dates during those weeks.

A. Redd

Total Control Panel

[Login](#)

To: ksimon@rosslawpc.com [Remove this sender from my allow list](#)
From: redda@dot.state.al.us

You received this message because the sender is on your allow list.

Plaintiff's Exhibit 4

Kell Simon

From: Kell Simon
Sent: Friday, June 27, 2008 8:08 AM
To: 'Redd, Andrew W.'
Subject: RE: Please review '94982'

Looks good to me - please file.

Are you checking on dates for Dan Morris and Sandi, or should I just pick some and notice the depos and have Dan served?

Kell Simon
Ross|Melton P.C.
1104 San Antonio St.
Austin, Texas 78701
phone 512-474-7677 fax 512-474-5306
ksimon@rosslawpc.com

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A. Redd

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